UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1099
17 December 1991

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1099th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 24 October 1991, at 3 p.m.

Chairman: Mr. POCAR
later: Mr. AGUILAR URBINA

SUMMARY

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Austria

---

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-18066/4050B

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Austria (continued) (CCPR/C/51/Add.2; M/CCPR/91/38/Rev.2)

1. The CHAIRMAN invited the Austrian delegation to respond to the questions in section II of the list of issues to be taken up in connection with the consideration of the second periodic report of Austria (M/CCPR/91/38/Rev.2), namely:

> "II. Non-discrimination and equality of the sexes (arts. 2 (1), 3, 24 and 26)
>
> "(a) Please comment on the extent to which the criteria elaborated in article 2 (1) of the Covenant are covered by the provisions of article 7 (1) of the Constitution (see para. 64 of the report).
>
> "(b) Please provide information on measures taken to promote the participation of women in the political, economic, social and cultural life of the country and on the proportion of the sexes in schools and universities.
>
> "(c) Please provide information about the application of the special Federal Constitutional Act against racial discrimination mentioned in the initial report.
>
> "(d) In which respects are the rights of aliens restricted as compared with those of citizens?"

2. Mr. BERCHTOLD (Austria) said it was very difficult to make a comparison between the provisions of article 7 (1) of the Constitution and those of article 2 (1) of the Covenant which guaranteed to all individuals within the territory of States parties the rights recognized in that instrument, since article 7 of the Constitution referred only to citizens. Discrimination was prohibited by a constitutional law. Article 7 of the Constitution was closer to article 26 of the Covenant. Since virtually all the rights contained in the Covenant were also embodied in the European Convention on Human Rights it could be said that Austrian law necessarily contained provisions similar to those of article 2 (1) of the Covenant.

3. As for the information requested under question II (b), he explained that the competent Austrian authorities were transmitting to him a report on the measures taken to promote the participation of women in the life of the country; he would bring the report to the attention of the Committee as soon as it was received. For the time being, all he could say was that, according to figures for 1988-1989, about 50 per cent of children attending day-care centres and of students in primary and secondary educational establishments were female, and that one-third of all university students were women.

4. His delegation had practically no information concerning the application of the special constitutional law prohibiting racial discrimination for the simple reason that no court had ever had to deal with a complaint based on that instrument. It appeared that the Constitutional Court was at present dealing with a case under that law but it had not yet rendered its judgement.

5. Lastly, the right of foreigners to engage in certain professions was restricted - the civil service, the bar and certain commercial activities being prohibited to them. Moreover, as in most other countries of the world, foreigners needed a permit in order to work.

6. Mr. ANDO pointed out that, even if the provisions of article 7 (1) of the Constitution and those of article 2 (1) of the Covenant were not strictly comparable, it should be possible to identify certain differences in order to explain them. Those differences, which reflected the fact that the provisions of the two instruments were similar without actually duplicating one another could, in point of fact, create difficulties for Austria in the application of the Covenant.

7. Referring to the status of women, he would be grateful if the Austrian delegation could provide information on the salaries received by women since the documents of the International Labour Organisation suggested that equal pay was not guaranteed.

8. Lastly, he asked whether the duration of the alternative service required of conscientious objectors was the same as that of military service.

9. Mr. FODOR raised the matter of article 4 of the Covenant about which no question was asked in the list. Noting that, according to paragrah 69 of the report (CCPR/C/51/Add.2), "Austrian constitutional law does not contemplate the suspension of fundamental rights", he asked what law would be applied in an emergency situation. A situation of that nature was, by definition, unforeseeable and it might after all be necessary to suspend certain rights. Did Austria consider all the rights set forth in the Covenant as fundamental? For example, if an emergency situation were to arise in Austria tomorrow, would the principle of the freedom of movement be maintained or suspended?

10. Mr. BERCHTOLD (Austria), reverting to the comparison between article 2 of the Covenant and article 7 of the Austrian Constitution, said that the provisions of those two articles were not, in his view, comparable owing to the historical context in which article 7 had to be placed. Indeed, the examples given in article 7 of the Constitution - which, once again, corresponded more to article 26 of the Covenant - as possible reasons for discrimination were different, for historical reasons, from those in article 2 of the Covenant, since under the monarchy certain privileges had been based on class, religion or wealth.

11. As for the question of equal pay, it was true that in Austria, as in other countries, such equality was not guaranteed in the private sector or even, according to some sources, in the civil service. The Government had therefore established an Equal Pay Commission whose primary function was to look into complaints of wage discrimination. It was true that so far the

Commission, which always tried to arrive at an amicable solution, had not been very effective, although it was obvious that things could only improve slowly.

12. At the present time, the alternative service required of conscientious objectors lasted as long as military service. However, since there was talk of conscientious objectors no longer being required to prove the convictions that prevented them from performing military service, it was felt that a longer period of alternative service would be justified. Draft legislation along those lines was being considered and would constitute a new law.

13. Austria had no specific legislation on emergency situations. The Constitution authorized the Federal Government to issue decrees which had the force of parliamentary legislation but that possibility, which had been introduced in 1930, had never been used - even in the 1930s.

14. The CHAIRMAN invited the Austrian delegation to reply only to question III (a) (Right to life) in the list of issues to be taken up, since it had already answered question (b) at the previous meeting. Question III (a) read as follows:

> "Please provide information on rules and regulations governing the use of firearms by the police and security forces".

15. Mr. SZYMANSKI (Austria) said that the use of firearms by the police and security forces was governed by the 1969 law on the use of arms. Force could in general be used in cases of legitimate defence, to subdue a person resisting lawful action being taken by the police, to arrest a person who had himself used force and, to a lesser extent, to avoid a danger presented by something. Firearms could be used only in those four cases and provided that less dangerous means (warning, pursuit, physical force, technical devices, threats) could not be used if human life was in danger or if the person arrested was, in view of his previous record, regarded as particularly dangerous. In any event, the police officer was required to warn the person concerned that a firearm was going to be used. Firearms should be used only in a situation where an aggressive person had to be brought under control and their use should cease as soon as that situation no longer existed.

16. The CHAIRMAN invited the Austrian delegation to reply to the questions contained in section IV of the list of issues, namely:

> "IV. Liberty and security of the person and the treatment of prisoners and other detainees (arts. 7, 9 and 10)
>
> "(a) Have there been any allegations of violations of obligations under article 7 in the period under review and, if so, were they investigated and with what result?
>
> "(b) Are there any statistics about ill-treatment of persons remanded in custody? Is there a decrease or an increase of complaints about such ill-treatment? Have any particular measures been taken to prevent ill-treatment? Please describe the outcomes, advantages and disadvantages of the various complaints procedures.

"(c) Please provide information on the main problems addressed by the prisons commissions in their recent annual report and on follow-up actions taken, if any. (See para. 85 of the report).

"(d) According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. In what way does Austrian law comply with that requirement?

"(e) What is the average length of pre-trial detention?

"(f) Does the Austrian Criminal Procedure Act permit the use of confessions obtained through ill-treatment as evidence against the accused? Please describe the principles of the Austrian law on evidence.

"(g) Please provide information on deprivation of liberty in institutions other than prisons and for reasons other than crimes (e.g. in psychiatric institutions)."

17. Mr. MIKLAU (Austria) replied that there had indeed been allegations of violations of obligations under article 7 of the Covenant. Acts of torture and ill-treatment constituted crimes which should be prosecuted. In 1989 the Minister of Justice had issued a decree ordering that allegations that appeared to be justified should not only be the subject of a police inquiry but also a thorough investigation. He did not know how many allegations had been brought before the courts for it was too early for statistics to be available on the subject, and he was therefore unable to provide information on the results of the inquiries that had been carried out. However, in 1990, Amnesty International had published a report entitled "Austria. Torture and ill-treatment" in which 14 individual cases had been mentioned. In two of them the complaint had been considered justified, in another, a police officer had been found guilty, and in yet another, the complaint had been considered justified but it had been impossible to identify those responsible for the acts in question; in the other 10 cases, either the complaints had not been justified, proceedings had been dropped or police officers had been acquitted, having been given the benefit of the doubt. Recognizing the need to keep records of cases of the ill-treatment of detainees, the Minister of Justice had in May 1991 issued a decree stating that, from July 1991, statistics would be kept of allegations of illegal acts committed during police custody and other forms of detention. The Amnesty International report had been circulated in Austria together with a report of the European Committee for the Prevention of Torture, which had reached the Austrian authorities in November 1991 and which had given rise to a lively debate among the public at large as well as among professional circles; that had made the Ministry of Justice and government procurators ponder the question of the treatment of persons in police custody. Even before the publication of the Amnesty International report, the Minister of Justice and the Minister of the Interior had issued a decree containing strict orders concerning the right of persons who had been arrested to communicate with counsel, the possibility of warning trustworthy third parties of the arrest, and contacts with lawyers. Those two Ministers had also published a pamphlet on the rights of minors who were arrested and remanded in custody. That pamphlet, which had since been revised

and supplemented, was intended to inform young persons who had been arrested of their rights and to provide police officers with instructions on ways of protecting the rights of detainees.

18. The prison commissions referred to in paragraph 85 of the report were independent bodies (one in each Land) responsible for monitoring prison conditions and recommending ways of improving them. As a result of their work, proposals had been made with a view to humanizing visiting conditions, promoting training and work during the period of detention, translating in-house prison regulations into various other foreign languages, giving a greater number of detainees an individual cell during the night and enabling all detainees to telephone.

19. Referring to question IV (d), he drew attention to the two provisions of the Code of Criminal Procedure mentioned in paragraphs 108 and 110 respectively of the report (CCPR/C/51/Add.2) under which any person remanded in custody must, within 48 hours, be brought before the examining magistrate, by whom he must be questioned within 24 hours. In other words, any person who was arrested was normally heard by the magistrate within 72 hours. In certain exceptional circumstances (just before a weekend, etc.), the Code of Criminal Procedure stated that the time-limit for the questioning of the detainee could be extended up to 72 hours. In other words, any person who had been arrested was brought before a judge within 5 days at most. Should the judge have doubts about the lawfulness of the arrest or the reasons used to justify the person's detention, he was required to release the detainee. The judge's decision could be appealed.

20. Replying to question IV (e), he explained that the last reliable figure went back to 1988, when the average length of pre-trial detention was 76 days. It was probably less at the present time but that was probably unfortunately due to the increase in the number of persons held in pre-trial detention during the previous two or three years, which invariably had the effect of reducing the average period of pre-trial detention.

21. Referring to question IV (f), he said that the Austrian Code of Criminal Procedure permitted the use of confessions obtained through ill-treatment as evidence against the accused - or rather it did not prohibit their use. That, moreover, explained the Austrian Parliament's Declaration, made at the time the authorities had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to the effect that Austria would consider article 15 of the Convention as the legal basis for not permitting the use of statements which were found to have been obtained by torture. In that way, prohibition of the use of such evidence had become an integral part of Austrian criminal law. He added that that Parliamentary Declaration was simply a provisional measure, and that the authorities were aware that the Code of Criminal Procedure would have to be amended so as to include in it explicit provisions prohibiting the use of confessions obtained through ill-treatment as evidence.

22. In the view of the Austrian authorities, the wording of article 15 of the Convention against Torture was rather restrictive; indeed, the concept of torture was understood in the sense of the definition given in article 1 of the Convention, whereas article 7 of the International Covenant on Civil and

Political Rights reflected a broader concept. Moreover, article 15 of the Convention stated that it must be established that a statement had been obtained by torture. Very often, however, there were simply indications that that was so, and only very rarely could the fact be established.

23. In any event, the Code of Criminal Procedure was to be completely redrafted and the competent authorities intended to include in the new Code the broad interpretation contained in article 15 of the Convention against Torture. In the meanwhile, the Minister of Justice had issued a decree containing instructions addressed to government procurators on how article 15 of the Convention should be applied.

24. With regard to question IV (g), he said that the matter of confinement in psychiatric institutions had, for about 15 years, been giving rise to considerable discussion both among the authorities as well as in the media, and tangible results had already been obtained. For example, the number of cases of compulsory confinement had been reduced by two-thirds during that 15-year period. Moreover, a new law had entered into force on 1 January 1991 concerning the legal aspects and judicial supervision of confinement in a psychiatric institution. That law provided for new procedures for monitoring such confinement and contained provisions on the treatment of detainees and on the restriction of a number of their freedoms. Under that law, any person confined against their will in a psychiatric institution had to be brought before the competent civil court within two days. From that time, the examining magistrate had four days in which to question the person concerned. Any restriction of freedom of movement and communication with the outside world had to be based on a judicial decision, regardless whether the confinement was voluntary or not, since in certain cases of voluntary confinement it was subsequently necessary to restrict freedom of movement or communication. That new law had not been in force long enough for any conclusions to be drawn, but it was already apparent that the monitoring system and time-limits specified were practicable, contrary to what members of the medical profession and others believed. Moreover, there had been a further reduction in the number of compulsory confinements and the length of confinements also appeared to be declining.

25. Mr. Aguilar Urbina took the Chair.

26. Mr. MAVROMMATIS, referring to paragraph 73 of the report (CCPR/C/51/Add.2) asked whether the idea of "homicide at the request of the victim" included euthanasia practised by a doctor. The question of euthanasia was of considerable concern at the present time and he wondered whether it was also being discussed in Austria.

27. Referring to the problem of suicide, he noted that the general trend during the past few years had been to decriminalize that act and that, at the present time, greater emphasis was placed on efforts to find ways of preventing suicide; a large number of countries had accordingly and for various reasons decided not to penalize suicide attempts.

28. As for termination of pregnancy, he said it was unclear when it was legal and when it was illegal. Generally speaking, the report (CCPR/C/51/Add.2) gave the impression that Austria, like many other countries, was torn between

recognition of the right to life and that of freedom of choice for women. It would be desirable if all countries could eventually decide in favour of one or the other of those two rights. He wondered whether his impression was correct and requested clarification from the Austrian delegation on those various points.

29. With regard to article 7 of the Covenant, there was no doubt that, as in most other countries, legal provisions protecting the rights of citizens were not lacking in Austria. Yet there was not a single State, even European, that could boast of having put an end to torture, and it had to be admitted that it was practised in virtually all countries, and even in Europe. It was undoubtedly because Austrian society was open and liberal that a large number of complaints of torture or ill-treatment had been referred to the authorities. If torture and ill-treatment had not been eliminated it was not because of a lack of legal provisions but rather because procedures governing their application were inadequate.

30. He also asked whether the Austrian prison commissions cooperated - and if so, how - with the European Committee for the Prevention of Torture set up in accordance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. He requested the Austrian delegation for further details on the subject, with special reference to the mandates and achievements of those prison commissions.

31. As for the matter of confessions obtained through torture, he noted that there was a considerable difference between a voluntary confession and one obtained through torture, and felt that no confession obtained by constraint should be admissible. If evidence of that type was accepted torture could never be ended.

32. He also wondered which authorities were competent to investigate complaints of ill-treatment. In principle, when someone had been tortured at a police station it was the very same persons, namely, the police who were asked to investigate the matter; that probably explained why so few charges had been brought against persons accused of torture. That was a very real problem which should be carefully studied.

33. He wondered whether it might not be possible to appoint an independent government procurator responsible for at least examining serious complaints made against public officials who had allegedly practised torture. Progress must be made in the consideration of that question, since the success of efforts being made to discourage and avoid acts of torture depended on its solution.

34. Mr. SADI, referring to article 6 of the Covenant, asked whether the Austrian authorities had taken steps to curb pollution and to provide the population with a healthy environment. He also wondered whether effective campaigns had been launched to prevent AIDS, cancer or tobacco-related diseases, for example, which had a direct impact on the right to life.

35. With respect to article 7 of the Covenant, he noted that although the Austrian delegation had admitted the existence of complaints of violations of obligations under that article, it was clear that ill-treatment was not

institutionalized in Austria. However he would like to know whether the police were given guidelines on how to ensure respect for human rights and whether they were familiar with the provisions of human rights instruments such as the Covenant and the Convention against Torture. The reasons for torture and ill-treatment must surely be sought in the failure to inform the competent authorities properly.

36. He noted with regret that the Austrian authorities had entered a reservation with respect to article 10 of the Covenant and that the Government considered that minors could be held together with adults in detention centres without untoward consequences. That was all the more surprising since he knew of no other countries which subscribed to that view. He wondered what was the basis for the Austrian Government's affirmation that it was not detrimental for minors to be held together with adults, and whether it would not be possible to change that practice and withdraw the reservation with respect to article 10.

37. Mrs. HIGGINS, commenting on the Austrian delegation's replies to question IV (a), noted that although torture was not institutionalized in Austria it was nevertheless practised to some extent. However, she admired the courageous attitude of the Austrian authorities who had published a critical report of the European Committee for the Prevention of Torture, as well as their reply to the Committee's questions; their position was encouraging and constituted an example of transparency in the search for solutions to the problem.

38. She noted that the Austrian authorities recognized that monitoring machinery in that respect was inadequate and that they had issued decrees and guidelines in order to supplement it. She wondered what difference there was between those decrees and guidelines and what would be done to apply the Decree adopted in May 1991 with a view to keeping complete statistics of cases of ill-treatment during police custody.

39. She realized that the structural changes mentioned by the Austrian delegation would take time, but wondered whether it might not be possible to introduce forthwith a number of measures to protect the rights of detainees, such as the installation of audio and video recording equipment in premises where questioning took place.

40. Referring to the time-limit for the questioning of a detainee by the judge mentioned in question IV (d), she asked whether the Austrian authorities considered the maximum period of five days provided for in certain special circumstances satisfactory and whether thought had been given to reducing that period to three days, which would be more in line with the provisions of article 9 (3) of the Covenant. She would also appreciate confirmation that the period was not longer for persons suspected of acts of terrorism.

41. With regard to question IV (f), she pointed out that the Committee's general observations were very clear on that point: evidence obtained in a manner that violated the provisions of article 7 of the Covenant was inadmissible. Moreover, she assumed that the text of those general

observations had prompted the Austrian authorities to include in their national legislation a broader interpretation of article 15 of the Convention against Torture, in view of article 7 of the Covenant.

42. Lastly, with respect to question IV (g), she said she was gratified by the information provided by the Austrian delegation and asked whether there was any procedure that provided for the review of compulsory confinement decisions.

43. Mr. POCAR resumed the Chair.

44. Mr. MULLERSON, asked whether the European Committee for the Prevention of Torture had detected in the reply of the Austrian authorities to its report any examples of violations of the provisions of the European Convention for the Prevention of Torture.

45. He also wondered, with reference to article 9 of the Covenant, at what stage a detainee was allowed to contact a counsel.

46. Mr. WENNERGREN, referring to an event that had been extensively discussed by the media, namely, the murder of several patients by a nurse in a hospital, asked what steps had been taken by the authorities to prevent the recurrence of such cases.

47. He was concerned by the number of complaints of ill-treatment, and even more by the fact that only 3 of the 14 cases mentioned by the Austrian delegation had resulted in charges being brought. In the other 11 cases either proof had been lacking or it had been impossible to identify those responsible. There was obviously no question of reducing the burden of proof and police officers, just like any other citizens were entitled to be protected. Yet it was a fact that ill-treatment was an evil which was taking root and that a spirit of solidarity appeared to bind members of the police force who remained united in the face of the accusations directed against them. In most cases it was the word of the complainant against that of a public official, since police officers did not generally give evidence against their colleagues and the authorities often covered up what they had done. The question was, therefore, how the evil that had obviously gained ground among police forces could be eradicated. Perhaps a system of impartial witnesses who would be present during the questioning should be developed. That method was used in Sweden - admittedly without much success - but on balance it was not completely negative. The idea of installing video and audio recording equipment suggested by Mrs. Higgins should be also explored. In any event it was clear that the training of members of the police or gendarmerie was not enough by itself to prevent ill-treatment.

48. Mr. FODAR, referring to article 18 (6) of the Code of Criminal Procedure referred to in paragraph 85 of the report, requested information on the precise powers of the prison commissions, namely, whether they were authorized to appeal directly to investigating bodies in the case of a serious irregularity or emergency situation. It was his understanding that those commissions could monitor the treatment of detainees in penitentiary

establishments in general, but he wondered which authority was responsible for the systematic monitoring of the treatment of persons held in psychiatric institutions or reformatories for juvenile delinquents.

49. Mr. DIMITRIJEVIC was under the impression that the difficulties encountered during inquiries into acts of brutality committed by the police were similar to those encountered in the investigation of negligence on the part of doctors, since their esprit de corps often made it impossible to obtain the necessary information. Obviously, therefore, it would be better if investigations could be conducted by an independent body. Moreover, it seemed that the victims of ill-treatment or police brutality were in many cases dissuaded or prevented from obtaining justice and redress. Indeed, since there were no longer any prisoners of conscience in Austria - which was most gratifying - common criminals were denied the support that they would otherwise have enjoyed in the same way as prisoners of conscience. Moreover it appeared that it was rather risky for victims of ill-treatment to institute proceedings, since that implied the exact identification before a criminal court of the police officer responsible, and the presumed victim who was unable to identify the person responsible could be prosecuted for defamation and would be liable to a sentence of up to four years' imprisonment. Moreover, the presumed victim against whom criminal proceedings were not brought was not entitled to free legal assistance, although he was required to be represented by a lawyer whose services were expensive. He requested clarification of the various points he had raised, and would also like to know whether Austria was thinking of adopting a system under which judges would refrain from imposing penalties on the basis of evidence which they suspected had been obtained illegally.

50. The CHAIRMAN invited the Austrian delegation to reply to the questions put by members of the Committee.

51. MR. MIKLAU (Austria), replying first to the questions put by Mr. Mavrommatis, said that attempted suicide had ceased to be an offence a long time ago, although criminal proceedings could be brought against anyone who helped a person to commit suicide or committed homicide at the request of someone else. The question of euthanasia was being widely discussed in Austria, just as in most countries of the world. The prevailing opinion was that, first of all, "passive" euthanasia in which medicaments that could possibly prolong the life of a patient during the terminal stages of his illness were not administered was regarded as a matter for the judgement and personal competence of the medical profession. Secondly, members of the medical and legal professions also accepted, to a certain extent, the practice that consisted in the administration of medicaments to relieve a patient's suffering, the doctor being aware that there was a danger of cutting short his life thereby. Thirdly, "active" euthanasia was regarded as illegal in Austria and contrary to medical ethics, which did not, however, mean that cases of that kind never occurred. Lastly, he explained that termination of pregnancy during the first three months was not punishable by the law and that after the first three months very specific conditions had to be met for it not to be punished. However, the fact that termination of pregnancy was not punishable did not necessarily mean that it was legal, and the matter was being widely discussed by criminologists, ethics specialists and theologians.

52. Replying to a question put by Mr. Sadi, he said that the prevention of environmental pollution was the subject of considerable debate in political and administrative circles, and that the Code of Criminal Procedure had been amended in 1987 with a view to imposing greater penalties for offences committed in that respect. However, practice had proved that the question was a delicate one, since the relevant legislation was based essentially on administrative provisions in force and on case law. Discussion of the matter was, however, continuing and it was an issue about which the Austrian people was particularly senstive.

53. The question of transmissible diseases, namely, AIDS, had for several years been of serious concern in Austria and a number of measures in the legal field as well as in the field of advisory services had been taken to improve the situation of those suffering from it. A system under which cases of AIDS were registered had been introduced but the principle of anonymity was strictly respected. Moreover, steps would be taken to provide drug addicts with substitute products and the article of the Code of Criminal Procedure that made the prostitution of homosexuals punishable had been repealed in 1989 since its provisions prevented the application of preventive measures and steps to combat the propagation of AIDS.

54. Referring to the reservation entered by Austria in connection with article 10 of the Covenant, he explained that although Austria recognized the principle of the separation of young untried prisoners and adults, the principle itself was not necessarily applied strictly. Austrian legislation on juvenile delinquency had been amended in 1988, when the age of criminal responsibility had been raised from 18 to 19. Consequently, the strict application of that principle would mean that a young person of 18 could not share his cell with someone of 19, although that type of situation - apart from exceptional cases - was not regarded as harmful. Furthermore, the steps taken to avoid the imprisonment of juvenile delinquents in general had yielded positive results and there were now barely more than two or three young prisoners in each penitentiary establishment; moreover, in recent years the total number of juvenile delinquents serving prison sentences had never exceeded 50.

55. The Austrian Government intended to amend the Code of Criminal Procedure in order to bring it into line with the decisions of the European Court of Human Rights, and in that way to reduce from five to four days the maximum period for which a person who had been arrested could be held before appearing before a judge. He also explained that Austrian legislation contained no special provisions concerning terrorism because, fortunately, no terrorist act had yet been committed by an Austrian terrorist - which of course did not mean that such acts originating abroad could not occur on Austrian territory.

56. With respect to confinement in psychiatric institutions, the law provided for special procedure under which the court had to render its decision within eight days, and not only the person concerned but also the director of the medical service of the institution in which he was placed and the members of his family could appeal the decision within 14 days. The case was thus brought before the court which handed down its decision in the following two weeks. A new law provided better guarantees of the rights of persons detained in psychiatric hospitals and patients detained against their will.

Accordingly, counsels appointed within each institution were responsible for representing detainees before the courts and helping them to enforce their rights. The results so far had been encouraging despite inevitable conflicts due to differences of opinion between medical staff and the counsels of detainees.

57. With respect to allegations of ill-treatment by the police during custody and the decrees of the Minister of Justice on the subject, he recalled that, in accordance with the decision adopted by the European Committee for the Prevention of Torture, the Austrian Government had agreed to publish its report on ill-treatment and other illegal acts, as well as the observations made in that respect, which it regarded as a step forward in the dialogue between the Austrian authorities and the European Committee, the objective being to improve guarantees and procedures in efforts to prevent ill-treament. Moreover, under the Decree of 15 September 1989 the investigation was entrusted to an independent examining magistrate who was required personally to hear the witnesses and the police officer under suspicion and to collect all necessary evidence. Austrian judges attached great importance to the principle of the independent evaluation of evidence which did not, however, mean that the principle of inadmissibility was not applicable. In that respect, the Code of Criminal Procedure prohibited the use of statements made by a witness during the examination proceedings if he subsequently refused to testify during the trial. The judge kept such evidence in the file although, according to Austrian legislation, certain evidence could not be used during the proceedings.

58. The question of the use of evidence obtained through a confession raised serious theoretical as well as practical difficulties. Discussion of the matter was continuing, and one of the solutions envisaged was to make a distinction between cases in which human rights had obviously been violated - such as torture - and in which the use of evidence could be regarded as illegal, and other cases in which fundamental rights had not been violated and in which the evidence obtained could be used in certain circumstances. However, no definite conclusions had yet been arrived at in the matter.

59. In reply to a point raised by Mrs. Higgins, he said that there was no real difference between decrees and guidelines, the word "decrees" being a formal term used to designate the instructions issued by the Ministry of Justice or the Ministry of Interior, and the term "guidelines" designating in a specific manner the measures to be taken to apply such decrees.

60. The question of monitoring the questioning conducted by the police during the 48 hours following the arrest of a suspect, which was directly related to article 7 of the Covenant, was being widely discussed in connection with the reform of the Code of Criminal Procedure that was under way. Under the former Austrian Code of Criminal Procedure of 1873, witnesses attended hearings before the examining magistrate, as was still the case in Sweden, which had a system of "citizen witnesses". Under the reform that was envisaged, the person concerned would have the right to request a trustworthy third party, lawyer or other, to be present during the questioning. That provision, which was still being studied, was nevertheless giving rise to a great deal of controversy. Moreover, according to a new provision introduced at the beginning of October, any person could request the application of similar

procedure in connection with any contact with members of the police. A provision of the same kind could therefore be introduced into the Code of Criminal Procedure in connection with questioning conducted by the police. As for the audio or video recording of police questioning, it could undoubtedly be envisaged in the future but was not yet current in the European democracies, and its application raised certain difficulties. In any event, the treatment of suspects by the police during questioning did not depend only on the existence of certain legislative provisions but above all on the spirit in which such provisions were applied. On the basis of the instructions issued by the Minister of Justice and Minister of the Interior, recent administrative reforms and the current reform of the Code of Criminal Procedure, as well as the work of the Committee on the Prevention of Torture set up under the European Convention for the Prevention of Torture and the reports of Amnesty International, the Austrian authorities were endeavouring to improve a situation that left much to be desired, as the Austrian Government had itself recognized in its observations on the report of the EEC Committee on the Prevention of Torture. In any event, reform was under way both on the legislative level as well as in practice.

61. The four nurses who had killed several patients in a hospital in the Vienna region and who had been referred to by Mr. Wennergren had been found guilty by the court of first instance and were appealing. Administrative measures had been taken to prevent something similar from happening again, by the stricter assignment of functions among highly-qualified nursing personnel and less-qualified nursing personnel (the four persons in question had belonged to the latter category). However, as it was difficult to find nursing personnel in Austria, greater numbers of foreign personnel - mainly from the Philippines and North Africa - had to be used. Two administrative commissions had been set up to examine such problems.

62. Mr. SZYMANSKI (Austria) said that the audio or video recording of questioning was not really the ideal solution, inasmuch as certain detainees could always say that the procedure had not been used correctly in their case. It would be better to stay with the recording of statements in writing in the presence of a witness - whether lawyer or trustworthy third party. It was also obvious that the Austrian police should be provided with the resources they needed to acquire the necessary technical equipment.

63. With respect to article 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which had already been referred to by Mr. Miklau, the benefit of the doubt had previously been given to police officers accused of torture, and when it was impossible to prove the alleged acts the officers in question had been acquitted and the victim tried. Henceforth, the accused would be given the benefit of the doubt. Mr. Sadi had also rightly raised the very important question of the training of police officers in human rights matters. The Ministry of the Interior had recently taken action along those lines, but since the training of police officers lasted two years a little more time was necessary before the results would be known.

64. The CHAIRMAN said that the Committee had thus completed its consideration of section IV of the list of issues to be taken up in connection with the consideration of the second periodic report of Austria. He therefore proposed going on to section V which read as follows:

"Right to a fair trial (art. 14)

"(a) What criteria are applied in selecting members of a jury?

"(b) Please provide information on the average length of criminal cases.

"(c) Have there been any applications for payment of compensation in accordance with the Criminal Compensation Act and, if so, with what result?

"(d) Please comment on the reasons for making reservations under article 14 of the Covenant? Is any consideration being given to withdrawing the reservations?"

65. Mr. MIKLAU (Austria) explained, in connection with question (a) that under a new law that had entered into force on 1 January 1991, members of juries and assessors were no longer selected by a commission consisting of members appointed by various Austrian political parties. They were now chosen in a random manner, if possible by computer systems. If no such systems were available, a number of persons were chosen by lot and their names communicated to the president of each criminal court, who again selected names by lot and drew up a list of those who would be requested to act as jurors or assessors.

66. Referring to question (b) concerning the average length of criminal cases, he said that although the Austrian delegation did not have any precise statistics available, he thought that it was rather shorter than in other countries. Some cases of course went on for a very long time, and it was for that reason that a monitoring system had been introduced in 1990. Under that system, it was felt that a case was exceptionally long if the court had not handed down its written decision within two months after the end of the trial. That, moreover, constituted the permissible maximum in the sense that the law specified two weeks in principle. It was also considered that a case was particularly long if over a year had elapsed before the trial began. On 1 October of each year the Ministry of Justice was informed of exceptionally long cases, details being provided in respect of various stages of the proceedings. On 1 April of each year the presidents of the courts of appeal reviewed such cases, which were again re-examined six months later. Although the Association of Austrian Judges had initially taken issue with the system which, in its view, could undermine the independence of judges, it had eventually recognized its efficacy.

67. The question of the payment of compensation referred to in question (c) arose in three cases, namely, in the event of unlawful detention, pre-trial detention and subsequent failure to bring charges, and the acquittal at the end of a second trial of a person who had been sentenced and imprisoned. Statistics for the previous eight years revealed that there were on average 5 to 24 cases of that kind per year, 90 per cent of which came under the pre-trial detention category. On average, complaints had been found to be

justified in two-thirds of cases and the victim had received compensation. Between 1983 and 1989 the total amount paid in compensation had varied from 460,000 to 540,000 schillings, depending on the year in question. In 1990 it had amounted to about 700,000 schillings, and for the first nine months of 1991 to 550,000 schillings. The amount was obviously increasing whereas the number of applications for payment of compensation remained unchanged.

68. As for question (d) concerning Austria's reservations in connection with article 14 of the Covenant, he explained that those reservations were explained essentially by the principle that a person could not be tried twice for the same offence. Since criminal proceedings were invariably of a two-tier nature, could it really be said that article 14 (5), had been violated if a person received a more severe sentence by a court of second instance? It had simply been out of caution that the Austrian authorities had entered that reservation in ratifying the Covenant and could envisage withdrawing it if the Committee or any other United Nations body provided them with the necessary assurances in that connection.

69. Mr. SADI said that he was still concerned by Austria's reservations in connection with article 14. The question was not one of appealing a judgement but of reopening a case in which a final judgement had already been handed down; it raised the danger of double jeopardy and would therefore apparently constitute a violation of article 14 (7).

70. Mr. MAVROMMATIS felt that many members of the Committee did not share Mr. Sadi's point of view. Personally he failed to see how the danger of double jeopardy could arise if the accused or the prosecution appealed a sentence.

71. Mr. SADI said he had not been referring to the right of appeal but to a new judgement after all remedies had been exhausted.

72. Mr. MIKLAU said that only in exceptional cases was a trial reopened following a final judgement. The dozen cases of that kind that occurred each year implied, for the most part, the submission of new evidence. In practice, the second judgement was almost always favourable to the accused; possibly only once in a period of 10 years had the contrary happened. The Austrian authorities wished to keep that option of a second judgement simply because, for example, a person acquitted of a murder might subsequently boast that he had in point of fact committed that murder. In any event, he thought that the legal systems of other countries also made provision for that type of eventuality.

73. The CHAIRMAN said that the Committee had completed its examination of section V of the list, the question of Austria's reservations in respect of article 14 remaining open pending instructions by the Committee.

The meeting rose at 6.05 p.m.